82-1636

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN THE MATTER OF
THE ADOPTION OF CHILD X AND CHILD Y, MINORS

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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NO FEDERAL QUESTION RAISED

There can be no security nor peace of mind for adoptive parents anywhere if the Fourteenth Amendment to the Constitution of the United States allows a retraction of a consent to adoption in which the natural parents not only state that they "fully and finally agree and consent to the adoption of their aforesaid minor child unto..." They further stated in the case at bar that "they fully understood that they are terminating all of their legal parental rights relating to said child, and do this of their own free will and accord." (Appendices A & B hereto.)

This Court cannot ignore the Constitutional rights of all adoptive parents who, in good faith, have taken children into their homes, given them their names, fed, clothed, housed and educated them; and have truly made them members of their families as if said children had been born to the adoptive parents in lawful wedlock. Such is this case.

The petitioners have made it quite clear that there was no fraud nor undue influence inflicted upon them by the Respondents. The natural father claims he was unduly influenced by his wife, the other Petitioner; and natural mother claims her belief that she was dying unduly influenced her to give up her children. However, as is reflected in the opinion of the lower Court, no mention was made by the natural mother that she thought she was dying when she consented to the adoption in February of 1981. The very conscientious Chancellor went into great detail in explaining to these Petitioners the significance of their giving up their children for adoption. (See Appendix D of Petition herein.) Yet in July of 1981, these same Petitioners filed a Petition to Vacate Adoption in connection with each of the children included in the adoptions.

Even though it is strongly urged that the consents to adoption as executed were absolutely final unless the undue influence claimed could be attributed to the Respondents, which is not even alleged, these efforts to vacate the adoptions contained allegations of a diagnosis by Dr. Louis Wilkins and Dr. Braxter Irby (both of whom live and practice medicine in Brookhaven, Mississippi, where the case was heard) that the natural mother could not live nor could they do anything for her. Yet when the matter was heard on its merits, neither physician was called to testify and verify that they had actually made such a diagnosis and that the natural mother had reason to believe in February of 1981, that she was dying. It is submitted that the natural mother made up this story after she changed her mind and decided she wanted the children back. Certainly, the Constitution of the United States does not give her this privilege.

It is pointed out further, that the federal question now before this Court was never mentioned nor argued either before the Chancery Court of Lincoln County, Mississippi, or the Supreme Court of the State of Mississippi. (See Appendix C). To state as does the Petition for Writ of Certiorari herein that "The question for review was raised by the very proceedings themselves,"

is an admission that no federal question is involved. The proceedings themselves follow the applicable Mississippi laws of adoption, and there is no allegation to the unconstitutionality of these laws. We find it absolutely clear that there is no federal question involved in this case, and if there had been a federal question, it was not raised in a timely manner for interpretation of the state courts. No federal question was, therefore, acted upon by the lower court, and The Supreme Court of the United States now has no jurisdiction to review the judgment on Writ of Certiorari.

ARGUMENT

The Due Process clause of the Fourteenth Amendment does allow citizens of our country protection against many things as pointed out in Petition for Writ of Certiorari filed in this cause. However, the right to an abortion, the right to use contraceptives, the right to teach while pregnant, the right of a father of children of an unwed mother to seek custody of such children, which rights are pointed out by cases cited by the Petitioner, although granted by said Fourteenth Amendment, have nothing whatever to do with the attempts by natural parents to withdraw their consents to adoption, when the consents were freely given. There is absolutely no similarity nor applicability to these cited cases and the case at bar. No state law took these two children from the natural parents. They not only agreed to the adoptions, they went to the adoptive parents and suggested that the adoptions take place.

The petitioners have a right to a family, and if by trickery or fraud the Respondents or the State of Mississippi had deprived them of their children, the Constitution of the United States should and does protect them. However, even though the federal issue was not raised until the Petition for Writ of Certiorari was filed in this Court, there is nothing in the record nor even alleged to show that the children were taken from the petitioners except by their own voluntary act. They were fully warn-

ed and advised of the significance of their giving up their children, which they knowlingly did, and they can only blame themselves if they regret their decision. The Constitution of the United States does not give them protection against themselves - certainly not when such protection would deprive adoptive parents everywhere of their families. The Respondents would show that they also are entitled to the protections which are granted by the Constitution. It is respectfully submitted that the Petition for Writ of Certiorari filed herein should be denied.

Respectfully submitted,

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APPENDIX A

CONSENT TO ADOPTION

STATE OF MISSISSIPPI

COUNTY OF LINCOLN

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, PATRICK LAURANCE BARNETT and wife, BRENDA CAROL BARNETT, who, after being by me first duly sworn, stated under oath that they are the natural parents of DANYLL SHREE BARNETT, a minor child born to them on March 12, 1979, and further state that they are unable to properly care for and take care of said minor child, and that they fully and finally agree and consent to the adoption of their aforesaid minor child unto LEONARD EARL FALVEY and wife, MONA MINNETTE FALVEY. They further stated that they fully understand that they are terminating all of their legal parental rights relating to the said child, and do this of their own free will and accord.

/s/ Patrick Laurance Barnett

/s/ Brenda Carol Barnett

SWORN TO AND SUBSCRIBED BEFORE ME, this the 19th day of February, 1981.

/s/ Bettye A. Smith
Title: Justice Court Judge

APPENDIX B

CONSENT TO ADOPTION

STATE OF MISSISSIPPI

COUNTY OF LINCOLN

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, PATRICK LAURANCE BARNETT and wife, BRENDA CAROL BARNETT, who, after being by me first duly sworn, stated under oath that they are the natural parents of TANYA DENISE BARNETT, a minor child born to them on September 10, 1980, and further state that they are unable to properly care for and take care of said minor child, and that they fully and finally agree and consent to the adoption of their aforesaid minor child unto PAUL DONALD KIMBLE and wife, CLARA MAE KIMBLE. They further stated that they fully understand that they are terminating all of their legal parental rights relating to the said child, and do this of their own free will and accord.

/s/ Patrick Laurance Barnett

/s/ Brenda Carol Barnett

SWORN TO AND SUBSCRIBED BEFORE ME, this the 19th day of February, 1981.

/s/ Bettye A. Smith
Title: Justice Court Judge

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 53,921

In The Matter Of The Adoption Of
Child X And Child Y, Minors

ASSIGNMENT OF ERRORS

Come now the Appellants, the natural parents of Child X and Child Y, by and through counsel and files this their Assignment of Errors alleging the following errors were committed by the lower Court.

1. The Lower Court erred as a matter of law in ruling that there was no duress or undue influence exerted on the natural parents because of their mistaken belief that the natural mother was suffering from a terminal illness.

2. The Lower Court erred as a matter of law in ruling that the natural father is not unduly influenced by the actions of his wife.

3. The Court below erred in relying upon *C.C.I. v. Natural Parent* as the basis of its decision, and such reliance resulted in manifest injustice occuring.

Respectfully submitted,

/s/ W.S. Moore,
Hugh W. Tedder, Jr.
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